

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

Civil Action No.

SCHIMLEY'S EXCAVATING, INC.,
a Corporation, S.C.H.E.X., Inc., a
Corporation, SOUTHSIDE
ENVIRONMENTAL GROUP, LLC,
a Corporation and MARTIN R. SCHIMLEY:
aka MARTY R. SCHIMLEY

Defendants.

AMENDED COMPLAINT

COUNT ONE

Plaintiff brings this action to enjoin Defendants from violating the provisions of Sections 15(a)(2) of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, 29 U.S.C. 201 et. seq.), (hereinafter called the Act).

II.

Jurisdiction of this action is conferred upon the court by Section 17 of the Act.

III.

(a) Defendant Schimley's Excavating, Inc. is a corporation having an office and place of business at 1256 N. Main Street, Niles, Ohio 44446, within the jurisdiction of this Court, where it was engaged in providing excavating services for construction and demolition projects.

(b) Defendant S.C.H.E.X., Inc. is a corporation having an office and place of business at 1256 N. Main Street, Niles, Ohio 44446, within the jurisdiction of this Court, where it was engaged in providing excavating services for construction and demolition projects.

(c) Defendant Southside Environmental Group, LLC is a corporation having an office and place of business at 1256 N. Main Street, Niles, Ohio 44446, within the jurisdiction of this Court where it was engaged in providing excavating services for construction and demolition projects.

(d) Defendant Martin R. Schimley, also known as Marty R. Schimley, resides at 2681 Black Oak Drive, Niles, Ohio 44446 and is President of corporate Defendant, Schimley Excavating, Inc., and at all times mentioned herein acted directly or indirectly in the interest of the corporate Defendants in relation to their employees, as an employer within the meaning of the Act.

IV.

(a) Defendants are, and at all times hereinafter mentioned were, engaged in performance of related activities for a common business purpose, constituting an enterprise within the meaning of Section 3(r) of the Act.

(b) At all times hereinafter mentioned, the enterprise described in IV(a) has been and is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1)(A) of the Act having been and being an enterprise having an annual dollar volume in excess of \$500,000.00 exclusive of excise taxes at the retail level and having had and having employees engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods or materials that have been produced for or moved in commerce.

V.

Defendants have repeatedly and willfully violated and they are violating the provisions of sections 7 and 15(a)(2) of the Act by employing many of their employees engaged in commerce or in the production of goods for commerce, within the meaning of the Act as aforesaid, for workweeks longer than forty (40) hours since July 21, 2007 without compensating these employees for their employment in excess of forty (40) hours, at rates not less than one and one-half times the regular rate at which they were employed.

VI.

Defendants, employers subject to the provisions of the Act, have repeatedly and willfully violated the provisions of sections 11(c) and 15(a)(5) of the Act, in that they have failed to make, keep and preserve adequate and accurate records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them, as prescribed by the regulations at 29 C.F.R. 516 issued by the Administrator of the Wage and Hour Division and Public Contracts Divisions, United States Department of Labor; that is to say, the records kept by Defendants fail to show adequately and accurately, among other things, the hours worked each workday and the total hours worked each workweek.

COUNT TWO

VII.

Plaintiff brings this action to recover from Defendants overtime compensation due their employees listed herein, under the provisions of the Act.

VIII.

Jurisdiction of this action is conferred upon the Court by Section 16(c) of the Act and by 29 U.S.C. §1337 and §1345.

IX.

Plaintiff repeats and incorporates herein the allegations set forth in Paragraphs III and IV above.

X.

With respect to the employees of Defendants listed on the attached Exhibit "A" for the time periods specified therein, Defendants violated the provisions of Sections 7 and 15(a)(2) of the Act by employing these employees in an enterprise engaged in commerce, within the meaning of the Act, as aforesaid, for workweeks longer than forty (40) hours since July 21, 2007, without compensating these employees for their employment in excess of forty (40) hours, at rates not less than one and one-half times the regular rate at which they were employed.

XI.

As a result of the aforesaid violations of Section 7 of the Act, there is due and owing from Defendants to the specified employees the amount which is stated in the attached Exhibit "A." Said sum has been demanded of Defendants and remains unpaid.

WHEREFORE, cause having been shown, Plaintiff prays judgment permanently enjoining and restraining Defendants, their officers, agents, servants, employees and those persons in active concert or participation with them, from violating the provisions of Sections 15(a)(2) of the Act, and for such other and further relief as may be necessary and appropriate.

Further, Plaintiff demands judgment against Defendants in the amount of \$11,087.79 for unpaid overtime compensation due under the Act as listed in the Exhibit

“A” attachment to this complaint, and for liquidated damages in an amount equal to the total back wages found due, plus costs and other appropriate relief.

Respectfully submitted,

s/SANDRA B. KRAMER
SANDRA B. KRAMER (0002071)
Sr. Trial Attorney
U.S. Department of Labor
881 Federal Office Building
1240 East Ninth Street
Cleveland, Ohio 44199
(216) 522-3876; 522-7172 Fax
E-mail: Kramer.Sandra@dol.gov

OF COUNSEL:

BENJAMIN T. CHINNI
Associate Regional Solicitor